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10/022,475	12/18/2001	Brian P. Delbarba	ARBP022	3229
21912 7590 03/05/2009 VAN PELT, YI & JAMES LLP 10050 N. FOOTHILL BLVD #200 CUPERTINO, CA 95014				
EXAMINER NORMAN, SAMICA L				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/022,475

Applicant(s)

DELBARBA, BRIAN P.

Examiner

SAMICA L. NORMAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-9 and 11-28 are pending. Claim 10 is cancelled.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-11 and 11-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites the terms "first lot" and "a particular second lot." The specification of the invention does not disclose these terms and the Applicant has not pointed out in the remarks where these limitations can be found. Therefore, the amended claim limitations are considered New Matter.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 and 11-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Growney et al., U.S. Patent No. 7,062,460 (reference B on the attached PTO-892) in view of Solomon, U.S. PG-Pub No. 2003/0233305 (reference A on the attached PTO-892) and further in view of Meyers, U.S. Patent No. 7,085,740 (reference C on the attached PTO-892).
3. As per claim 1, Growney et al. teaches a method of market basket bidding for surplus merchandise comprising: soliciting bids for a plurality of lots, each lot having a comparison value (see column 3, lines 21-22); receiving a plurality of bids on combinations of the lots from a plurality of buyers, at least one lot receiving bids from more than one buyer being an overlap portion (see column 3, lines 56-57 and column 7, lines 64-67); and awarding the overlap portion to a winning buyer, the winning buyer having submitted a bid on a combination that includes the overlap portion (see column 7, lines 64-67 and column 8, line 1); wherein the bid submitted by the winning buyer has a parameter having a higher parameter value than other parameters calculated from bids from other buyers (see column 7, lines 64-67 and column 8, line 1). Growney et al. does not explicitly teach wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations and adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot.

4. Solomon teaches wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations (see paragraph 0355-0357 and 00361). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of allowing buyers to bid for specific bundles of items and compete for the overlapping items (see paragraph 0355 and paragraph 0361, lines 1-4 of Solomon).
5. Meyers teaches adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot (see column 12, lines 5-7). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. in One of ordinary skill in the art would have motivated to incorporate this feature for the purpose of giving bidders a benefit apart from the auction (see column 11, lines 33-34 of Meyers).
6. As per claim 2, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the soliciting comprises: identifying at least one of goods and services to be purchased (see column 5, lines 41-44).

7. As per claim 3, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the soliciting comprises: providing a list price and a minimum purchase price for each lot to the buyer (see column 6, lines 51-53).
8. As per claim 4, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the receiving comprises: selecting, by the buyer, the combination of lots desired; and offering a price for the combination of lots (see column 7, lines 64-67).
9. As per claim 5, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the awarding comprises: dividing the bid on the combination by the total comparison value; determining effective multipliers; and comparing the effective multipliers of buyers competing for the overlap portion (see column 7, lines 62-67 and column 8, line 1).
10. As per claim 6, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the awarding comprises: allotting the lots in the combination not included in the overlap portion to the buyer bidding on the lots (see column 5, lines 53-57).
11. As per claim 7, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 6 as described above. Growney et al. further teaches requiring the buyer to purchase all of the lots awarded (see column 5, lines 53-57).
12. As per claim 8, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches notifying the buyers

bidding on the overlap portion (see column 10, lines 52-57); and allowing the buyers to raise bids on at least one of the overlap portion, at least one lot in the overlap portion, and the combination (see column 8, lines 1-7).

13. As per claim 9, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the awarding comprises: adjusting the parameter for combinations having at least one of a larger volume of lots, a larger dollar volume, and specified lots (see column 7, lines 62-67 and column 8, line 1).

14. As per claim 11, Growney et al. in view of Solomon and further in view of Meyers teaches the method of claim 1 as described above. Growney et al. further teaches wherein the soliciting comprises: multiplying the comparison value by a factor to calculate a modified cost; and providing the modified cost to the buyers (see column 8, lines 51-60).

15. As per claim 12, Growney et al. teaches a method of market basket bidding for surplus merchandise comprising: soliciting bids for a plurality of lots, each lot having a comparison value and a minimum purchase price (see column 3, lines 21-22); receiving a plurality of bids on combinations of the lots from a plurality of buyers, at least one lot receiving bids from more than one buyer being an overlap portion (see column 3, lines 56-57 and column 7, lines 64-67); notifying the buyers bidding on the overlap portion (see column 10, lines 52-57); allowing the buyers to raise bids on at least one of the overlap portion, at least one lot in the overlap portion, and the combination (see column 8, lines 1-7); awarding the overlap portion to a winning buyer, the winning buyer having submitted a bid on a combination that includes the overlap portion (see column 7, lines 64-67 and column 8, line 1); wherein the bid submitted by the winning buyer has a parameter having a higher parameter value than other parameters calculated from bids from

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other buyers (see column 7, lines 64-67 and column 8, line 1); allotting the lots in the combination not included in the overlap portion to the buyer bidding on the lots (see column 5, lines 53-57); requiring the buyer to purchase all the lots allotted and awarded (see column 5, lines 53-57). Growney et al. does not explicitly teach wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations and adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot.

16. Solomon teaches wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations (see paragraph 0355-0357 and 0361). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of allowing buyers to bid for specific bundles of items and compete for the overlapping items (see paragraph 0355 and paragraph 0361, lines 1-4 of Solomon).

17. Meyers teaches adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the

act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot (see column 12, lines 5-7). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. in One of ordinary skill in the art would have motivated to incorporate this feature for the purpose of giving bidders a benefit apart from the auction (see column 11, lines 33-34 of Meyers).

18. As per claim 13, Growney et al. teaches a system for market basket bidding for surplus merchandise comprising: a database for receiving and storing a plurality of bids for combinations of lots selected by a plurality of buyers and comparison values for the lots, at least one lot receiving bids from more than one buyer being an overlap portion (see Figure 11C, reference no. A24); and a processor configured to: award the overlap portion to a winning buyer having submitted a bid on a combination that includes the overlap portion, the bid submitted by the winning buyer having a parameter with a higher parameter value than other parameter calculated from bids from other buyers (see column 5, lines 16-19). Growney et al. does not explicitly teach wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations and adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot.

19. Solomon teaches wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations (see paragraph 0355-0357 and 0361). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the system of Growney et al. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of allowing buyers to bid for specific bundles of items and compete for the overlapping items (see paragraph 0355 and paragraph 0361, lines 1-4 of Solomon).

20. Meyers teaches adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot (see column 12, lines 5-7). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. in One of ordinary skill in the art would have motivated to incorporate this feature for the purpose of giving bidders a benefit apart from the auction (see column 11, lines 33-34 of Meyers).

21. As per claim 14, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the parameter comprises an adjustment for at least one of a larger volume of lots, a larger dollar volume, and specified lots (see column 7, lines 62-67 and column 8, line 1).

22. As per claim 15, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the lots comprise at least one of goods and services (see column 5, lines 41-44).

23. As per claim 16, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the processor is configured to divide each bid by the total comparison value, determine effective multipliers, and compare the effective multipliers of the buyers competing for the overlap portions (see column 7, lines 62-67 and column 8, line 1).

24. As per claim 17, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the database comprises a minimum purchase price for each lot (see column 6, lines 51-53).

25. As per claim 18, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the software allots the lots in the combination not included in the overlap portion to the buyer bidding on the lots (see column 5, lines 53-57).

26. As per claim 19, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 18 as described above. Growney et al. further teaches wherein the buyer purchases the lots awarded and allotted (see column 5, lines 53-57).

27. As per claim 20, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the comparison value comprises at least one of a list price, a purchase price, and a depreciated cost (see column 7, lines 62-67 and column 8, line 1).

28. As per claim 21, Growney et al. in view of Solomon and further in view of Meyers teaches the system of claim 13 as described above. Growney et al. further teaches wherein the comparison value comprises a cost multiplied by a factor (see column 8, lines 51-60).

29. As per claim 22, Growney et al. teaches a computer program product (see Figure 2, reference no. 18) for market basket bidding for surplus merchandise, the computer program product being embodied in a computer readable medium and comprising computer instructions for: soliciting bids for a plurality of lots, each lot having a comparison value (see column 3, lines 21-22); receiving a plurality of bids on combinations of the from a plurality of buyers, at least one lot receiving bids from more than one buyer being an overlap portion (see column 3, lines 56-57 and column 7, lines 64-67); and awarding the overlap portion to a winning buyer, the winning buyer having submitted a bid on a combination that includes the overlap portion, the bid submitted by the winning buyer having a parameter with a higher parameter value than other parameters calculated from bids from other buyers (see column 7, lines 64-67 and column 8, line 1 and see column 7, lines 64-67 and column 8, line 1). Growney et al. does not explicitly teach wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and wherein there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations and adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot.

30. Solomon teaches wherein each buyer is associated with its own combination of lots that are bid on by that particular buyer and there is at least one lot receiving bids from more than one buyer being an overlap portion and wherein a first one of the combinations includes a lot that is not present in a second one of the combinations (see paragraph 0355-0357 and 0361). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the computer program product of Growney et al. One of ordinary skill in the art would have been motivated to incorporate this feature for the purpose of allowing buyers to bid for specific bundles of items and compete for the overlapping items (see paragraph 0355 and paragraph 0361, lines 1-4 of Solomon).

31. Meyers teaches adjusting a parameter value associated with a buyer in the plurality of buyers, wherein the adjusting is based at least in part on said buyer having bid on a first lot, the act of which bidding on said first lot has been designated by the seller as triggering a discount on a particular second lot (see column 12, lines 5-7). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate this feature into the method of Growney et al. in One of ordinary skill in the art would have motivated to incorporate this feature for the purpose of giving bidders a benefit apart from the auction (see column 11, lines 33-34 of Meyers).

32. As per claim 23, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 22 as described above. Growney et al. further teaches wherein the parameter comprises an adjustment for at least one of a larger volume of lots, a larger dollar volume, and specified lots (see column 7, lines 64-67 and column 8, line 1).

33. As per claim 24, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 22 as described above. Growney et al. further teaches wherein the third machine readable code divides each bid by the total list price, determines effective multipliers, and compares the effective multipliers of the buyers competing for the overlap portions (see column 7, lines 64-67 and column 8, line 1).

34. As per claim 25, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 22 as described above. Growney et al. further teaches wherein the third machine readable code allots the lots in the combination not included in the overlap portion to the buyer bidding on the lots (see column 5, lines 53-57).

35. As per claim 26, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 25 as described above. Growney et al. further teaches wherein the buyer purchases the lots awarded and allotted (see column 5, lines 53-57).

36. As per claim 27, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 22 as described above. Growney et al. further teaches wherein the comparison value comprises at least one of a list price, a purchase price, and a depreciated cost (see column 7, lines 64-67 and column 8, line 1).

37. As per claim 28, Growney et al. in view of Solomon and further in view of Meyers teaches the computer program product of claim 22 as described above. Growney et al. further teaches wherein the comparison value comprises a cost multiplied by a factor (see column 8, lines 51-60).

Response to Arguments

1. Applicant's arguments filed January 13, 2009 have been fully considered but they are not persuasive.
2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., offering a discount on one lot if the buyer bids on another lot) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
3. However, for sake of argument, Meyer teaches a buyer bidding on a product (first lot). By bidding on that product (first lot), the buyer receives a discount on the next product that they bid on (predetermined second lot).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
5. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMICA L. NORMAN whose telephone number is (571)270-1371. The examiner can normally be reached on Mon-Thur 6:30a-5p, w/ Fri off.

39. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

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